

Combating Transnational Crimes Trafficking in Women from a Feminist Perspective Legal Theory

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Abstract

The data shows that the transnational crime of trafficking in women is increasing every year. Starting from prostitution, migrant workers to narcotics smuggling carried out by women who are victims of trafficking in women. Various legal efforts have been made by both international institutions and the Indonesian government. One of the obstacles faced is the feminization of poverty where women experience economic difficulties that make them tempted and trapped either intentionally or not, in the vortex of women's trafficking syndicates. In addition, the alignment of the state, which is still strong patriarchal, is still felt to be not in favor of women. This research focuses on the defense of Feminist Legal Theory against women where the law, especially in Indonesia, it has not fully sided with the welfare of women, which makes women avoid the crime of trafficking in women. This normative juridical research shows that the problem of trafficking in women is not only a legal issue, but more than that it is a welfare issue that must be obtained by all citizens, especially women so as to prevent them from transnational crimes of trafficking in women.

Keywords: Countermeasures; Trafficking of Women; Feminist Legal Theory



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INTRODUCTION

Every December 2, the world commemorates the Abolition of Slavery Day. Even so, until now slavery in the world still exists and even becomes a transnational and international business arena. In terms of gender, women are more potential victims of trafficking than men because of the purpose of sexual exploitation and exploitation of domestic work. This condition is exacerbated by the feminization of poverty, the inferior status of women who cannot realize and channel their potential, as well as the state which fails to fulfill the protection rights of women.¹, which actually impoverishes the economy, social and culture. There are several elements of an act that is considered trafficking², including:

1. An act, including recruitment, transportation between regions or between countries, transfer, departure, reception and temporary accommodation.
2. The object is human.
3. These acts are carried out by means of verbal or physical threats or violence, kidnapping, fraud, exploiting a position of vulnerability and taking advantage.
4. With the aim of prostitution, sexual exploitation, illegal migrant workers, pornography industry, drug dealers, buying and selling organs and other exploitation.

According to the Global Alliance Against Traffic on Women (GAATW) report³, indicators of trafficking in women in Indonesia can be seen that there are three aspects, namely:

1. The rise of movement from one place to another, both domestically and abroad, which is not based on the free will or choice of the woman concerned, but due to compulsion or pressure from the situation in the form of poverty and unemployment, resulting in a strong desire to improve fate.
2. The increasing number of companies supplying workers, especially illegal ones, because the profits obtained by recruiters, sellers, and company syndicates are allegedly very large.
3. The high number of fraud cases, including false promises, debt bondage, slavery, coercion, pressure and extortion.

If we look at the indicators above, it is almost certain that currently there are still many forms of exploitation of women through trafficking in women that occur in the world.

Transnational crime is an excess of globalization. This is not surprising, because the logical consequence of an increasingly complex social interaction will produce noise that hinders or interferes with the interaction itself. However, what has been studied a lot is how to actually

1 Maslihati Nur Hidayati, "Upaya Pemberantasan dan Pencegahan Perdagangan Orang Melalui Hukum Internasional dan Hukum Positif Indonesia", *Jurnal Al Azhar Indonesia Seri Pranata Sosial*, Vol. 1, No. 3, Maret (2012): 165.

2 Shinta Agustina, "Perdagangan perempuan dan anak sebagai kejahatan transnasional: permasalahan dan penanggulangannya di Indonesia", *Jurnal Hukum projustitia*. Vol 24 no 1 januari (2006): 50.

3 Siti Muflichah dan Rahadi Wasi Bintoro, "Trafficking: Suatu Studi Tentang Perdagangan Perempuan dari Aspek Sosial, Budaya dan Ekonomi", *Jurnal Dinamika Hukum* Vol. 9 No. 1 Januari (2009): 126.

overcome the negative excesses of globalization, where through a series of studies and research on transnational crime, the real crime problem will be identified.⁴

The case of trafficking in women in Indonesia is increasing. This can be seen from the data The Online Information System for the Protection of Women and Children (SIMFONI PPA) in 2020 that cases of trafficking in women increased by 62.5%. Meanwhile, according to the five-yearly report of the 2015-2019 Task Force for the Prevention and Handling of Trafficking in Persons (GTPP-TPPO), out of 2,648 victims of trafficking in persons, 2,319 victims were women and 329 were men. This figure further confirms that women are more vulnerable to being victims of trafficking than men.

Formulation Of The Problem

1. How do international and national laws regulate trafficking in women?
2. What is the feminist legal theory's view of dealing with trafficking in women?

METHOD

The type of research conducted is normative juridical research with a statutory approach. The research data used in this study is data in the form of legal materials, both primary legal materials and secondary legal materials. Researchers have collected and reviewed various journals related to trafficking in women and related laws and regulations.

ANALYSIS AND DISCUSSION

Trafficking in Women as a Transnational Crime

Transnational crimes in general have the nature of going beyond the territorial boundaries of the state. Cheriff Bassiouni mentioned several characteristics of transnational crime, namely:

1. The suggestions, infrastructure and methods used go beyond the territorial boundaries of the country
2. Crimes committed involving more than one country
3. Crimes committed have an impact on more than one country

In many cases, trafficking in persons, especially women, has become a transnational crime because it transcends national borders which has become the concern of countries victims of trafficking in women and the attention of world organizations. These organizations have made many conventions in order to prevent and prosecute perpetrators of crimes of trafficking in women in the world. The Indonesian government has also made a regulation in the form of a law to eradicate criminal acts of trafficking in persons as an effort to tackle the crime of trafficking in persons, especially women.

⁴ Chairil A. Adjis, "Alkohol, TKI dan Perdagangan Anak: Perspektif Kejahatan Transnasional", *Jurnal Kriminologi Indonesia*, Vol. 4 No. I September (2005): 77.

Regulations on the Prohibition of Trafficking in Women in International Law

Various conventions have been made in response to the increasing crime of trafficking in women involving many countries, both international and transnational, including these conventions:

1. Universal Declaration of Human Rights (1948), between Articles 3 to 21 in the form of the right to be free from slavery and inhuman and the right to be free from torture or inhuman or degrading treatment,
2. Convention for the Elimination of Trafficking in Persons and the Exploitation of Prostitutes, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Other (25 July 1951). This convention considers that prostitutes are victims so that those who must be arrested and punished are those who plunged them. States parties that ratify this convention are required to punish those who exploit prostitutes. In addition, participating countries are also required to provide protection through education, health, social, economic and other services as a form of prevention and rehabilitation of prostitution. This convention also protects migrant workers, especially women, from trafficking in women for the purpose of sexual exploitation and prostitution by monitoring labor placement agencies.⁵
3. Covenant on Economic, Social and Cultural (1976), in the form of the right to social protection, an adequate standard of living, the highest attainable standard of physical and mental well-being,
4. Covenant of Civil and Political Rights (1976) Article 8 paragraph (1), the rights to freedom of movement and prohibition against acts of slavery and forced labour,
5. UN CEDAW (1979), ratified by Indonesia in Law no. 7 of 1984 concerning the Elimination of All Forms of Discrimination Against Women in article 6 which reads: States parties are obliged to make appropriate regulations, including legislation, to eradicate all forms of trafficking in women and exploitation of prostitution.
6. General Recommendation 19 CEDAW (1992), in the form of a declaration on the elimination of violence against women,
7. Beijing Platform of Action (1995), which is derived from reports from various countries in the world about human rights violations that occur to women, thus recommending to disseminate information on the cessation of all forms of violence against women, where one of the agendas is the cessation of all forms of trafficking in women.
8. UN Convention Transnational Organized Crime (1999), Art 3 provides limitations on the act of trafficking in women.⁶

CEDAW Convention

On 18 December 1997, the United Nations General Assembly adopted the Convention on the Elimination of All From Discrimination Against Women (CEDAW). CEDAW is one of the

5 Siti Rochmiyatun, “Perdagangan Perempuan Perspektif Yuridis”, *Jurnal An Nisa'a*, Vol. 8, no. 1, Juni (2013): 93-94.

6 Devi Rahayu, “Perlindungan Hukum bagi Buruh Migran Terhadap Tindakan Perdagangan Perempuan”, *Jurnal Hukum Universitas Trunojoyo Madura*, No. 1 Vol. 18 Januari (2011): 121.

instruments of international law that aims to protect women's human rights, which in fact their human nature does not guarantee the implementation of their rights. CEDAW is designed to combat all forms of discrimination against women that persist throughout a woman's life.

CEDAW is the most comprehensive and very important convention on the protection and enforcement of women's rights because it has made the human aspect of women the focus of human rights concerns. The soul of CEDAW is rooted in the purpose of the United Nations Charter, which is to reaffirm belief in human rights, the dignity and worth of every human being and the equal rights of men and women. CEDAW is also comprehensive in providing details on the meaning of equal rights for women and men and the steps needed to achieve them.

CEDAW is a new breakthrough for the protection of women which is not only seen as a formal legal recognition, but also to change the social pattern of community behavior which has been considered to have contributed greatly to discrimination against women. The patriarchal culture that already dominates in society has an impact that hinders women's participation in all fields so that it will seriously hamper the increase in women's productive forces. In order to reform and review the law and its implementing policies.

CEDAW is a cooperative convention that is recognized worldwide as the Bill of Rights for Women, because it emphasizes equality and justice between women and men, namely equal rights and opportunities and the enjoyment of benefits in all areas of life and activities. Equality in CEDAW is defined not as equality in all sectors but equality of treatment and opportunity in the political, economic, social and other worlds. CEDAW is based on humanity which is a unity, interrelated and cannot be separated as stated in its preamble. The principles of the CEDAW protocol include the principle of substantive equality, the principle of non-discrimination and the principle of state obligations.⁷

Regulation of the Prohibition of Trafficking in Women in Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons

Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons not only regulates forms of exploitation such as forced labor or forced services and slavery, but at the same time ensnares all acts of exploitation in the process of methods or all forms of exploitation that occur between regions within a country. or between countries where the perpetrators are individuals, mafia syndicates and corporations.

In Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, trafficking in women for sexual purposes is regulated in article 2, namely:

Article 2: (1) Any person who recruits, transports, harbors, sends, transfers or receives a person by means of threat of force, use of force, kidnapping, confinement, fraud, fraud, abuse

7 Wahyu Yohana Ria, Pangemanan Diana R, Grace H. Tamponganyoy, "Perdagangan Perempuan Lintas Negara Sebagai Suatu Bentuk Pidana Sebagaimana Diatur dalam Undang-undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang dan CEDAW", *Lex Crimen Vol. X/No. 1/Jan-Mar/(2021)*: 32.

of power or position of vulnerability, debt bondage or payment or benefits, even though obtaining approval from a person who has control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. ,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million rupiah).

(2) If the act as referred to in paragraph (1) causes people to be exploited, the perpetrator shall be punished with the same punishment as referred to in paragraph (1).

In Article 2 point 1 of Law Number 21 of 2007 concerning the Eradication of the Criminal Acts of Trafficking in Persons, there is the word "for the purpose" before the phrase exploiting people indicates that the crime of trafficking in persons is a formal offense, namely that the existence of a criminal act of trafficking in persons is sufficient if the following elements are fulfilled. elements of actions that have been formulated, and do not have to cause consequences. In addition to Article 2, there are several articles related to trafficking in women including:

Article 3: Everyone who imports people into the territory of the Republic of Indonesia with the intention of being exploited in the territory of the Republic of Indonesia or exploited in another country shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine a minimum of Rp.120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million rupiah).

Article 4: Everyone who brings Indonesian citizens outside the territory of the Republic of Indonesia with the intention of being exploited outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a maximum fine of a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

Article 12: Anyone who uses or exploits a victim of a criminal act of trafficking in persons by having sexual intercourse or other obscene acts with a victim of a criminal act of trafficking in persons, employs a victim of a criminal act of trafficking in persons to continue the practice of exploitation, or takes advantage of the proceeds of a criminal act of trafficking in persons shall be punished with the same punishment as referred to in Article 2, Article 3, Article 4, Article 5, and Article 6.

Article 7: (2) If the criminal act as referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the death of the victim, the punishment shall be a minimum imprisonment of 5 (five) years and a maximum imprisonment of 5 (five) years. for life and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah).

Article 9: Anyone who tries to mobilize another person to commit the crime of trafficking in persons, and the crime does not occur, shall be punished with a minimum imprisonment of

1 (one) year and a maximum of 6 (six) years and a minimum fine of Rp. 40.000,000.00 (forty million rupiah) and a maximum of Rp. 240,000,000.00 (two hundred and forty million rupiah).

Feminist Legal Theory and Defense Against Women

As a philosophy and a movement, feminism was born in the era of the 18th century enlightenment in Europe which was pioneered by Lady Mary Wortley Montagu and the Marquis de Condorcet. During this period two major revolutions took place, namely the American Revolution in 1776 and the French Revolution in 1789. "The American Bill of Right" which gave rights to individuals side by side with the French call for the slogans *Liberte*, *Egalite* and *Fraternite* (independence, equality and brotherhood). have a strong influence on each individual. Following the Declaration of the Rights of Man in France, Olympe de Gouge published the "Declaration of the Right of Woman" in 1789.⁸ Even though it was motivated by political and economic conflicts, the French revolution had brought the winds of freedom, not only in the political and economic fields but also in social, legal and even gender. This revolution is a desperate thirst for the claimant of freedom.

Feminist theory is a broad system of general ideas about social life and human experience that develops from a developing perspective on women. This theory centers on women in three ways. First, the main research "object", the starting point of all his research, is the situation (or situations) and experiences of women in society. Second, this theory treats women as the central "subject" in the research process; So, she tries to see the world from the point of view typical of women in the social world. Third, feminist theory is critical and active towards women, seeking to build a better world for women – and so for humanity.⁹

Feminists are of the view that male theorists have underestimated the oppression that women experience in the household, labor market, politics and culture because they see women as essentially not citizens.¹⁰ Men are usually presented as dominant, active, aggressive, and authoritative, performing a variety of important and diverse roles that often require professionalism, efficiency, rationality, and power to be executed successfully. On the other hand, women are usually shown to be subordinate, passive, submissive, and marginal, carrying out a number of secondary and unattractive jobs that are limited to their gender, their emotions and their domestication.¹¹

Simone de Beauvoir, a French philosopher wrote *The Second Sex* which contains the design of feminist theory. From this book, the Western women's movement (Second Wave Feminism) emerged which challenged issues of injustice such as unfair wages, menstrual leave, abortion

⁸ Budi Winarno, *Dinamika Isu-Isu Global Kontemporer*, CAPS (Yogyakarta: Center of Academic Publishing Service, (2014): 360.

⁹ George Ritzer dan Douglas J. Goodman, *Teori Sosiologi: Dari Teori Sosiologi Klasik Sampai Perkembangan Mutakhir Teori Sosial Postmodern*, (Bantul: Kreasi Wacana, 2011): 487-488.

¹⁰ Ben Agger, *Teori Sosial Kritis: Kritik, Penerapan dan Implikasinya*, (Yogyakarta: Kreasi Wacana, 2005): 201.

¹¹ Dominic Strinati, *Popular Culture: Pengantar Menuju Teori Budaya Populer*, (Yogyakarta: Bentang, 2003): 211.

and violence began to be discussed openly.¹² Simone de Beauvoir emphasizes two things: First, there is a difference between sex and gender; Second, subordination between women is not justified biologically, humans are the same as men, and must have equal status in all aspects of public life. Beauvoir distinguishes between "female" (based on biological categories) and "woman" (based on existential categories). For many feminists, this is mapped into the distinction they use between sex and gender, where sex is a biological category and gender is a social category. By stating this distinction, feminists are able to argue that there is no necessary connection between biological sexual differences and socio-cultural gender norms. It is also to campaign for equality between men and women in social life.¹³ Women's equality is also felt to be absent in domestic life. Women experience a dilemma when working to earn a living for their families, while at the same time they also have an obligation to take care of children and the household. This does not exist in men who seem to only have an obligation to work.¹⁴

From this philosophy and feminist movement, a legal thought was born that tried to make a breakthrough against the enactment of the law against women and the discrimination that women get from the law¹⁵. That is Feminist Legal Theory (FLT) which seeks to break down legal inequality that is not objective in viewing men and women. Male domination of the law makes women discriminated against and marginalized in law. FLT seeks to dismantle male-dominated laws and their gender tendencies. FLT sees the need to make a breakthrough in making and enacting laws against women to eliminate discrimination by law against women. FLT cannot be separated from the various schools of feminism, namely Liberal Feminism, Marxist Feminism, Marxist Feminism, Gender Psycho-analytic Feminism, Existentialist Feminism and Ecofeminism.

At the end of the 20th century, the feminist movement is widely seen as a splinter from the Critical Legal Studies movement, which in essence provides a lot of criticism of the legal logic that has been used so far, the manipulative nature and dependence of law on politics, economics, the role of law in shaping patterns of social relations, and the formation of a hierarchy by legal provisions is not fundamental.¹⁶ Feminist legal theory rejects the perspective of legal positivism which cleans the law from non-legal elements such as sociological, political, historical and even moral. Among the characters are John Austin and Hans Kelsen. Although they agree that law must be separated from non-juridical elements, they differ on a

12 Farida Nurun Nazah, "Posisi Perempuan Menurut Perspektif Kompilasi Hukum Islam di Indonesia (Kajian Gender dan Feminisme)", *Jurnal Hukum dan Keadilan*, Vol. 7 No. 2, September (2020): 281-282.

13 Kimberly Hutching, *Simone de Beauvoir dalam Teori-Teori Kritis: Menantang Pandangan Utama Studi Politik Internasional*, Editor Jenny Edkins dan Nick Vaughan Williams, (Yogyakarta: Pustaka Pelajar, 2013): 95.

14 Angga Unita Kiranantika, "Dualisme Peran Gender dalam Keluarga Buruh Migran Indonesia, dalam Konferensi Internasional Feminisme: Persilangan Identitas Agensi dan Politik (20 Tahun Jurnal Perempuan)", *Jurnal Perempuan* (2016): 231.

15 Aditya Yuli Sulistyawan, "Feminist Legal Theory dalam Telaah Paradigma: Suatu Pemetaan Filsafat Hukum". *Jurnal Masalah-masalah Hukum Undip*, Jilid 47 No. 1, Januari (2018): 56.

16 Wirasandi, "Wanita dalam Pendekatan Feminisme", *Jurnal Ilmiah Rinjani Universitas Gunung Rinjani* Vol. 7 No. 2 Tahun (2019): 48.

philosophical basis. Austin based his thoughts on Utilitarianism while Kelsen based his thoughts on Neokantianism.¹⁷

FLT's defense of women stems from "women's experiences". Therefore, it can be said that the FLT positioned itself "in favor" of women in order to break the legal establishment which is said to be objective but presents discrimination and injustice for women. In general, feminist legal thinkers tend to assume that women's identity is homogeneous. So they tend to think of feminist legal theory only as an alternative to patriarchal legal theory.¹⁸ Thus, it is not enough to criticize the neutrality or objectivity of patriarchal law only from the perspective of gender, but also from the perspective of race, religion, age, sexual orientation, class, social status, and so on. Because only with this kind of criticism can the plural identity of women and other individuals be assumed. Therefore, the main problem for legal theory with a feminist perspective is how to make laws that can recognize the plurality of women and society.¹⁹

Among the characteristics of the feminist legal methodology proposed by Sadli and Porter, namely partiality to women and gender as a "tool of analysis".²⁰ At least with that feminist law responds to various legal discriminations, namely through the struggle for rights that are different from men's rights because of their biological and physiological differences. The granting of different rights in the form of equal treatment (equal treatment) or special treatment (special treatment), which later we know as affirmative action (affirmative action).²¹

The demands of idealism for the role of women in all fields, especially in the professional world, often make women become victims of marginalization. In many cases men are still considered the "perpetrators". That's not completely wrong. However, if we look more closely, the state with its legal and political policies is the most dominant in subordinating women. Even so, feminist jurists still believe that law has both institutional and normative dimensions. Law remains important in shaping the perspective of society.²²

R. Valentina Sagala and Ellin Rosana stated that the causes of human trafficking are economic factors, poverty and gender inequality. In the feminist context, they consider that women are vulnerable to being victims of trafficking due to the dominance of patriarchal ideology which considers women as objects and not patriarchal subjects so that their position is only in the second position where they cannot disagree with the wishes of their parents. In addition, early marriage, violence against women, low levels of education also support the

17 Serlika Aprita dan Rio Adhitya, *Filsafat Hukum*, (Depok: PT RajaGrafindo Persada, 2020): 103.

18 Donny Danardono, *Teori Hukum Feminis: Menolak Netralitas Hukum, Merayakan Difference dan Anti-Esensialisme*, Delivered at Gender School Batch 2, LRC-KJHAM, July 25, 2020, p. 11. This paper was also published in Sulistyowati Irianto (ed.), 2006, *Perempuan & Hukum: Menuju Hukum yang Berperspektif Kesetaraan dan Keadilan*, Yayasan Obor Indonesia, Jakarta.

19 Donny Danardono, Op. Cit., p. 11-12.

20 Wendy Agus Budiawan, "Teori Hukum Feminis Untuk Kajian Penelitian Hukum Perspektif Perempuan Terkait Masalah Hukum", *Jutice Pro Jurnal Ilmu Hukum* Vol. 5 No. 1 (2018): 55-56.

21 Sini Dana Panti Retnani, "Feminisme dalam Perkembangan Aliran Pemikiran dan Hukum di Indonesia", *Jurnal Ilmu Hukum Prinsipium UKSW*, Vol. 1 No. 1 (2017): 105.

22 Agus Pratiwi, "Perspektif Hukum Feminis Terhadap Aturan Fleksibilitas Pasar Tenaga Kerja di Indonesia," *Padjajaran Jurnal Ilmu Hukum*, Vol. 4 No 1 Tahun (2017): 49.

occurrence of trafficking in women. Furthermore, the feminization of poverty, migration, the strengthening of globalization and neoliberalism have made trafficking in women more widespread.²³

In addition to the opinion that the causes of human trafficking are economic factors, poverty, and gender inequality, R. Valentina Sagala and Ellin Rozana argue, from a feminist perspective, the causes of children and women being vulnerable to being victims of human trafficking are first, the strengthening of patriarchal ideology in society and country. This ideology sees the position of children and women as objects, and not patriarchal subjects, so that they get a second or subordinate position where children and women do not have a bargaining position against the wishes of their parents. Two, the low level of education for women, then violence against women which is a tool for men to show their power, and also early marriage. Furthermore, Sagala & Of the several international conventions that have been approved by countries in the world, none of them can actually tackle and even eliminate acts of human trafficking that occur both domestically and between countries. This can be proven by the more and even the cases that arise related to this problem are increasingly sophisticated and difficult to handle.²⁴

Even so, various conventions and regulations are made as legal protection provided by the Government through its legal instruments such as laws and regulations (the Law on the Protection of Witnesses and Victims, and the Law on the Eradication of the Crime of Trafficking in Persons). victims of human trafficking, the legal process from investigation to court, crime rehabilitation, social rehabilitation, to the process of repatriating victims of trafficking in persons and social reintegration. Apart from this, the issue of restitution/compensation that can be given to victims will also be discussed. Legal protection for crime victims as part of community protection can be realized in various forms, such as through the provision of restitution and compensation, medical services, and legal assistance. Compensation is something that is given to the party who suffers a loss commensurate with the damage suffered. The difference between compensation and restitution is that "compensation arises from the victim's request, and is paid by the community or is a form of community or state responsibility (The responsible of the society).²⁵

In a report released by the United States Embassy in 2020, Indonesia is considered not to fully meet the minimum standards for eradicating the crime of trafficking in persons (TPPO). Even so, the report stated that the Indonesian government showed an increase in comprehensive efforts when compared to the previous report. These efforts include providing protection services to more victims of human trafficking through the Ministry of Social Affairs, identifying, receiving and assisting more victims of exploitation abroad than in the previous

23 Annisa Jihan Andari, "Analisis Viktimisasi Struktural Terhadap Tiga Korban Perdagangan Perempuan dan Anak", *Jurnal Kriminologi Indonesia* Vol. 7 No.III Desember (2011): 309.

24 Novianti, "Tinjauan Yuridis Kejahatan Perdagangan Manusia (Human Trafficking) Sebagai Kejahatan Lintas Batas Negara", *Jurnal Ilmu hukum* (2014): 52.

25 Iin Ratna Sumirat, "Perlindungan Hukum Terhadap Perempuan dan Anak Korban Kejahatan Perdagangan Manusia", *Jurnal Studi Gender dan Anak* Vol. 3 No. 1, Januari-Juni (2016): 24.

year, restoring the wage rights of Indonesian workers who demand compensation for unpaid work abroad.²⁶

CONCLUSION

The issue of trafficking in women is not only purely legal, but also another issue, namely welfare. Feminization of poverty makes women experience economic difficulties that make them tempted and trapped, intentionally or not, in the vortex of women's trafficking syndicates. In addition, the alignment of the state, which is still strong patriarchal, is still felt to be not in favor of women. Various conventions and existing laws are deemed not optimal in preventing and tackling the transnational crime of trafficking in women. Feminist Legal Theory is of the view that the laws applied, especially in Indonesia, have not been in favor of the interests of women's rights, which has prevented women from committing the crime of trafficking in women. Feminist Legal Theory sees the need to make a breakthrough in making and enacting laws against women to eliminate discrimination, marginalization and subordination carried out by law against women. In the future, the law must pay more attention to women, especially to the rights of education and welfare so that the crime of trafficking in women can be prevented and handled optimally.

REFERENCES

- Adjis, Chairil A. "Alkohol, TKI dan Perdagangan Anak: Perspektif Kejahatan Transnasional", *Jurnal Kriminologi Indonesia*, Vol. 4 No. I September 2005.
- Agger, Ben. *Teori Sosial Kritis: Kritik, Penerapan dan Implikasinya*, (Yogyakarta: Kreasi Wacana, 2005).
- Agustina, Shinta. "Perdagangan perempuan dan anak sebagai kejahatan transnasional: permasalahan dan penanggulangannya di Indonesia", *Jurnal Hukum projustitia*. Vol 24 no 1 januari 2006.
- Andari, Annisa Jihan. " Analisis Viktimisasi Struktural Terhadap Tiga Korban Perdagangan Perempuan dan Anak", *Jurnal Kriminologi Indonesia* Vol. 7 No.III Desember 2011.
- Aprita, Serlika, dan Rio Adhitya, *Filsafat Hukum*, (Depok: PT RajaGrafindo Persada, 2020).
- Budiawan, Wendy Agus. "Teori Hukum Feminis Untuk Kajian Penelitian Hukum Perspektif Perempuan Terkait Masalah Hukum", *Jutice Pro Jurnal Ilmu Hukum* Vol. 5 No. 1 2018.
- Danardono, Donny. *Teori Hukum Feminis: Menolak Netralitas Hukum, Merayakan Difference dan Anti-Esensialisme*, Disampaikan di Sekolah Gender Angkatan 2, LRC-KJHAM, 25 Juli 2020, hlm. 11. Makalah ini juga diterbitkan dalam Sulistyowati Irianto (ed.), 2006,

26 <https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-orang-2020/> accessed December 24, 2021.

Perempuan & Hukum: Menuju Hukum yang Berperspektif Keadilan dan Keadilan, Yayasan Obor Indonesia, Jakarta.

Hidayati, Maslihati Nur. "Upaya Pemberantasan dan Pencegahan Perdagangan Orang Melalui Hukum Internasional dan Hukum Positif Indonesia", *Jurnal Al Azhar Indonesia Seri Pranata Sosial*, Vol. 1, No. 3, Maret 2012.

Hutchings, Kimberly. *Simone de Beauvoir dalam Teori-Teori Kritis: Menantang Pandangan Utama Studi Politik Internasional*, Editor Jenny Edkins dan Nick Vaughan Williams, (Yogyakarta: Pustaka Pelajar, 2013).

Kiranantika, Angga Unita. "Dualisme Peran Gender dalam Keluarga Buruh Migran Indonesia, dalam Konferensi Internasional Feminisme: Persilangan Identitas Agensi dan Politik (20 Tahun Jurnal Perempuan)", *Jurnal Perempuan* 2016.

Muflichah, Siti dan Rahadi Wasi Bintoro. "Trafficking: Suatu Studi Tentang Perdagangan Perempuan dari Aspek Sosial, Budaya dan Ekonomi", *Jurnal Dinamika Hukum* Vol. 9 No. 1 Januari 2009.

Nazah, Farida Nurun. "Posisi Perempuan Menurut Perspektif Kompilasi Hukum Islam di Indonesia (Kajian Gender dan Feminisme)", *Jurnal Hukum dan Keadilan*, Vol. 7 No. 2, September 2020.

Novianti, " Tinjauan Yuridis Kejahatan Perdagangan Manusia (Human Trafficking) Sebagai Kejahatan Lintas Batas Negara", *Jurnal Ilmu hukum* 2014.

Pratiwi, Agus. "Perspektif Hukum Feminis Terhadap Aturan Fleksibilitas Pasar Tenaga Kerja di Indonesia," *Padjajaran Jurnal Ilmu Hukum*, Vol. 4 No 1 Tahun 2017.

Rahayu, Devi, "Perlindungan Hukum bagi Buruh Migran Terhadap Tindakan Perdagangan Perempuan", *Jurnal Hukum Universitas Trunojoyo Madura*, No. 1 Vol. 18 Januari 2011.

Retnani, Sini Dana Panti. "Feminisme dalam Perkembangan Aliran Pemikiran dan Hukum di Indonesia", *Jurnal Ilmu Hukum Prinsipium UKSW*, Vol. 1 No. 1 2017.

Ria, Wahyu Yohana, Pangemanan Diana R, Grace H. Tamponganyoy. "Perdagangan Perempuan Lintas Negara Sebagai Suatu Bentuk Pidana Sebagaimana Diatur dalam Undang-undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang dan CEDAW", *Lex Crimen* Vol. X/No. 1/Jan-Mar/2021.

Ritzer, George. dan Douglas J. Goodman, *Teori Sosiologi: Dari Teori Sosiologi Klasik Sampai Perkembangan Mutakhir Teori Sosial Postmodern*, (Bantul: Kreasi Wacana, 2011).

Rochmiyatun, Siti. " Perdagangan Perempuan Perspektif Yuridis", *Jurnal An Nisa'a*, VOL. 8, NO. 1, JUNI 2013.

Sulistiyawan, Aditya Yuli. " Feminist Legal Theory dalam Telaah Paradigma: Suatu Pemetaan Filsafat Hukum". *Jurnal Masalah-masalah Hukum Undip*, Jilid 47 No. 1, Januari 2018.

Sumirat, Iin Ratna Sumirat. "Perlindungan Hukum Terhadap Perempuan dan Anak Korban Kejahatan Perdagangan Manusia", *Jurnal Studi Gender dan Anak* Vol. 3 No. 1, Januari-Juni 2016.

Strinati, Dominic. *Popular Culture: Pengantar Menuju Tori Budaya Populer*, (Yogyakarta: Bentang, 2003).

Winarno, Budi. *Dinamika Isu-Isu Global Kontemporer*, CAPS (Yogyakarta: Center of Academic Publising Service, 2014).

Wirasandi, "Wanita dalam Pendekatan Feminisme", *Jurnal Ilmiah Rinjani Universitas Gunung Rinjani* Vol. 7 No. 2 Tahun 2019.

<https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-orang-2020/> diakses 24 Desember 2021.